



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

1/C

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,756	02/01/2001	Mark James Weiser		1086
7590	10/19/2004		EXAMINER	
BARRY I. FRIEDMAN			COE, SUSAN D	
METZ LEWIS, LLC			ART UNIT	PAPER NUMBER
11 STANWIX STREET,				
18TH FLOOR			1654	
PITTSBURGH, PA 15222			DATE MAILED: 10/19/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Continued Examination Under 37 CFR 1.114

On July 19, 2004, applicant filed a request for continued examination (RCE). This request was improper because applicant cannot request continued examination of an application until after prosecution in the application is closed. See 37 CFR 1.114(a). In this situation, MPEP section 706.07(h) instructs:

If prosecution in the application is not closed, applicant will be notified of the improper RCE and any amendment/reply will be entered. Thereafter, the application will be forwarded to the examiner for consideration of the amendment/reply under 37 CFR 1.111.

Thus, applicant's amendment and response filed July 19, 2004 is treated as a request for reconsideration under 37 CFR 1.111.

Notice of Non-Responsive Amendment

Applicant's amendment filed July 19, 2004 is considered non-responsive to the previous Office action. In this response, applicant has cancelled the elected species of calcium carbonate. Thus, applicant has effectively cancelled the elected invention. Once an elected invention has received an action on the merits, applicant is not allowed to cancel an elected invention. Since the elected invention has been cancelled, the response filed July 19, 2004 is considered to not be responsive to the Office action of March 15, 2004.

It is noted that in applicant's response, applicant states that the RCE was filed to allow for a shift in the elected invention. However, applicant cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch

inventions). See 37 CFR 1.145. Thus, even if the RCE was properly filed, it is not permitted to file a "divisional" style RCE.

Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.


Susan D. Coe, Examiner

June 24, 2004